



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MAC - 203686

PRELIMINARY RECITALS

Pursuant to a petition filed on November 9, 2021, under Wis. Stat. § 49.497(1m)(a), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA), a hearing was held on January 5, 2022, by telephone.

The issue for determination is whether the agency has established that it correctly pursued an Order to Compel Payment of Liability regarding an MA overpayment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
114 North Leonard Street
PO Box 885
West Salem, WI 54669

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. The respondent determined that petitioner received a recoverable MA overpayment, and issued written notice of the overpayment on April 2, 2021, to petitioner at [REDACTED]
[REDACTED]
3. A repayment agreement was sent to petitioner at [REDACTED], on May 3, 2021.
4. Two dunning notices, dated June 2, 2021 and July 2, 2021, were mailed to petitioner at [REDACTED]
[REDACTED]. The notice issued July 2, 2021, was returned on July 7, 2021 and immediately resent to petitioner at [REDACTED].
5. A third dunning notice was sent to petitioner at [REDACTED], on August 3, 2021.
6. Petitioner denies receiving any of the notices identified at Paragraphs 2, 3, 4 and 5, above.
7. On October 6, 2021, the respondent issued an Order to Compel Payment of Liability, identifying an MA overpayment in the amount of \$1,530.00.

DISCUSSION

State statute provides that if an individual fails to enter into or adhere to a repayment agreement after the agency provides notice of a Medical Assistance/BadgerCare Plus (MA/BCP) overpayment, the individual may be subject to an order to compel payment of that liability (i.e., the overpaid benefits):

49.497(1m)(a) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

Wis. Stat. §49.497(1m)(a).

The agency has the burden of proof in this matter. To meet that burden, a preponderance of the evidence in the record must establish that the agency properly seeks an Order to Compel Payment. The very first sentence of the statutory language cited above indicates that the respondent may issue an order to compel payment of the liability when, *after notice that an incorrect payment was made*, a recipient who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment. *Id.* The respondent has not established that it ever issued the April 2, 2021 overpayment notice or the May 3, 2021 repayment agreement to petitioner at his correct address. Petitioner credibly testified that he never received these documents.

The record before me provides no grounds upon which to conclude that the respondent has met its statutory obligations in pursuit of an Order to Compel. The respondent has not met its burden to establish that it has correctly pursued the October 6, 2021 Order to Compel Payment of Liability. While nothing in

this Decision precludes the agency from pursuing future collection actions regarding the underlying debt, any such actions would be best served following the issuance to petitioner of new overpayment notices with appeal rights included, repayment agreements, and dunning notices.

CONCLUSIONS OF LAW

The agency did not establish by a preponderance of the evidence in the record that it properly seeks to compel payment for the outstanding MA overpayment in the amount of \$1,530.00.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to rescind the Notice of Administrative Action: Order to Compel Payment of Liability. The agency shall comply with this order within ten days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

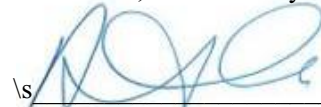
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

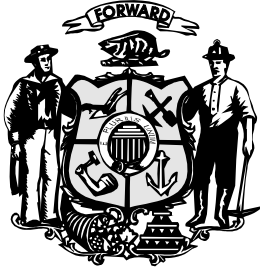
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of February, 2022



Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 16, 2022.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability

